IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.34903 of 2002

B.Mariappan .. Petitioner

-Vs-

1. Secretary to Government
of Tamil Nadu, Public Works
Department, Fort St.George
Chennai.
2. The District Collector
Tirunelveli District.
3. The Chief Engineer
Plan Formulation
Public Works Department
Chennai.5.
4. The Engineer in Chief
Water Resources Organisation
Public Works Department
Chennai-5.
5. Muthusamy
6. Chelladurai
7. Srinivasan .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for a writ of Declaration as stated therein.

For Petitioner : Mr.K.Sukumaran

For Respondents : Mr.M.S.Palanisamy,
Additional Govt. Pleader

:ORDER

Alleging that the decree and judgment dated 22.6.1993 made in A.S. No.15 of 1990 on the file of the Sub Court, Tenkasi setting aside the decree and judgment of the learned District Munsif, Tenkasi, dated 22.12.1989 made in O.S.No.394 of 1986 laid by the respondents herein along with one Alagamuthu Konar for declaration and injunction with regard to the rights in Periyakulam Konmai is a nullity for want of jurisdiction, the petitioner seeks a writ of declaration to declare that the decree passed in O.S.No.394 of 1986 on the

file of the learned District Munsif, Tenkasi, pursuant to the judgment and decree passed in A.S.No.15 of 1990 on 22.6.1993, on the file of the Sub Court, Tenkasi is a nullity.

2. The suit sought to be declared as a nullity, was admittedly filed in a representative capacity by Alagamuthu Konar and villagers of Keelkalangal Village, but the petitioner has not chosen to impleaded the villagers and Alagamuthu, and on this ground itself this writ petition is liable to be dismissed as not maintainable.

3. The only contention raised by Mr.K.Sukumaran, learned counsel for the petitioner is that the right declared in the impugned decree and judgment is barred under Section 4 of the Tamil Nadu Irrigation Tanks (Improvement) Act and Section 8 of the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, and it is therefore contended that in view of Section 9 of the Code of Civil Procedure, the judgment and decree dated 22.12.1989 in O.S.No.394 of 1986 of the learned District, Tenkasi, is liable to be held a nullity. In this regard, the learned counsel for the petitioner also places reliance on the following decisions:
(i) BUDHIA SWAIN AND OTHERS Vs. GOPINATH DEB AND OTHERS reported in (1999) 4 SCC 396; and
(ii) UNION OF INDIA Vs. THE REGISTRAR, CHENTRAL ADMINISTRATIVE TRIBUNAL CHENNAI (DB) reported in 2002 (3) CTC 411.

4. I have given careful consideration to the submissions of both sides.

5. The decision in BUDHIA SWAIN AND OTHERS Vs. GOPINATH DEB AND OTHERS reported in (1999) 4 SCC 396, deals with the inherent powers of the High Court conferred under Section 151 of the Code of Civil Procedure for vacating the judgment where a proper remedy in some other proceedings is available, and the Apex Court held that mere error in the exercise of jurisdiction does not vitiate the legality or validity of the proceedings unless the order is set aside by a challenge in a prescribed manner subject to law of limitation.

6. The Apex Court in STATE OF TAMIL NADU Vs. A.GURUSAMY, reported in 1997 (2) CTC 114, held that the declaration with regard to the community since being governed under the list of Scheduled Castes and Scheduled Tribes published under Articles 341 and 342 of the Constitution of India, the jurisdiction of the Civil court is barred in such matters by necessary implications. Applying the ratio laid down in STATE OF TAMIL NADU Vs. A.GURUSAMY, reported in 1997 (2) CTC 114, the Division Bench of this Court in UNION OF INDIA Vs. CENTRAL ADMINISTRATIVE TRIBUNAL CHENNAI reported in 2002(3) CTC 411 held that jurisdiction of the Civil Court by implication is barred to try the suit for declaration of the community certificate.

9. In this regard, I am obliged to refer Section 4 of the Tamil Nadu Irrigation Tanks (Improvement) Act, Section 8 of the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, and Section 9 of the Code of Civil Procedure, which read as under:

"Section:4 of Tamil Nadu Irrigation Tanks (Improvement) Act- Suits and applications for injunctions barred: No court shall entertain any suit or application for the issue of any injunction to restrain the exercise of any powers conferred on the Government by Section 3."
"Section:8 of Tamil Nadu Irrigation Works (Construction of Field Bothies) Act - Bar of suits and proceedings:

(1) No suit or other legal proceedings shall lie against the Government, at the instance of any person:
(a) in respect of any act done or purporting to be done under this Act, or
(b) on the ground that any field bothy interferes or is likely to interfere with his rights in any manner.

(2) No suit, prosecution or other legal proceeding shall lie against any officer or servant of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder."

Section:9 of Code of Civil Procedure – Courts to try all civil suits unless barred: The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
Explanation-I: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
Explanation-II: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

10. In the instant case, a careful reading of Section 4 of the Tamil Nadu Irrigation Tanks (Improvement) Act and Section 8 of the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, make it clear that there is a bar to try the suit before the Civil Court only with regard to the exercise of powers conferred on the Government and the authorities in the respective Acts, but not with regard to irrigation right of the villagers from a particular tank. Therefore, both the decisions, referred supra, are not applicable to the facts and circumstances of the present case.

9. Hence, it may not be proper for this Court to issue a writ as prayed for. The writ petition is therefore dismissed without prejudice to the right of the petitioner to seek appropriate relief before the competent authority. No costs. Consequently, W.P.M.P.No.51993 of 2 002 is also dismissed.

Sasi

Internet : Yes

To:

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of Tamil Nadu, Public Works
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